Overview of foundations and federal tax law

1. Overview of foundations and federal tax law
2. Avenues for advocacy by public charities
3. Lobbying rules for public charities under federal tax law
4. Foundation support for advocacy by public charities
5. Funding public charities who lobby
6. Funding voter registration drives by public charities
7. Advocacy capacity and evaluation

AGENDA
### 501(c)(3) Private Foundation

<table>
<thead>
<tr>
<th>Examples</th>
<th>Tax Treatment</th>
<th>Lobbying Activities</th>
<th>Electoral Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>THE ANNE E. CASEY FOUNDATION</td>
<td>Tax-Exempt Contributions tax-deductible</td>
<td>Tax on foundation &amp; managers</td>
<td>Cannot support or oppose a candidate for office</td>
</tr>
<tr>
<td>Maine Community Foundation</td>
<td>Tax-Exempt Contributions tax-deductible</td>
<td><strong>PROHIBITED</strong></td>
<td>Cannot support or oppose a candidate for office</td>
</tr>
</tbody>
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### 501(c)(3) Public Foundation

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<td>Tax-Exempt Contributions tax-deductible</td>
<td>Insubstantial Part or 501(h)</td>
<td>Cannot support or oppose a candidate for office</td>
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**What is ADVOCACY?**

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Nonprofits can and should ADVOCATE & LOBBY for POLICY CHANGE!

Why should nonprofits engage in ADVOCACY?

- Create Systemic Change
- Protect Current Funding
- Educate Legislators
- Discuss Broad Social Issues, Foster Discussion
- Empower Your Constituents and Communities

Avenues for ADVOCACY by PUBLIC CHARITIES

- Community Organizing
- Public Education
- Nonpartisan Voter Ed.
- Organize a Rally
- Lobbying Exceptions
- Regulatory Efforts
- Litigation
- Educational Conferences
- Research
- Training
- Get to Know Legislators
- Exceptions
- Lobbying
- Engagement
LOBBYING Rules for PUBLIC CHARITIES

INSUBSTANTIAL PART TEST
1. Default test
2. What is “insubstantial?”
3. Lobbying defined broadly: attempting to influence legislation
   or
501(H) EXPENDITURE TEST
1. One-time election – IRS Form 5768
2. Dollar-based limits based on annual expenditures
3. Narrow definitions of lobbying

LOBBYING LIMITS for 501(c)(3) public charities under federal tax law

DIRECT
Communication
Legislator
Expresses a view about specific legislation

GRASSROOTS
Communication
General public
Expresses a view about specific legislation
Call to action

LOBBYING under 501(h)
(same definitions for private foundations)
DIRECT Communication
Legislator
Expresses a view about specific legislation

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SPECIAL "LEGISLATOR" RULE
Members of the general public are "legislators"

Ballot Measures
- Ballot initiatives
- Referendums
- Constitutional amendments
- Bond measures

Federal
Members of Congress

State
State Legislature

Local
City Council, County Board of Supervisors
A BILL

To provide for comprehensive health insurance coverage for all United States citizens, improved health care delivery, and for other purposes.

1. The House of Representatives

On August 26, 2009, the House of Representatives passed H.R. 676, the Patient Protection and Affordable Care Act. The bill was introduced by Representative John Conyers (D-MI) and co-sponsored by over 200 other Members of Congress. The bill would provide health insurance coverage for all Americans, including those currently uninsured, and would create a new system of health care delivery that is more efficient and accessible.

2. Senate Consideration

The Senate has not yet introduced a comprehensive health care reform bill, but it is expected to do so in the coming weeks. The Senate Finance Committee is currently working on a draft bill that would extend coverage to an estimated 31 million uninsured Americans and would also reduce the deficit by 2022.

3. Impact of Health Care Reform

If enacted, the Patient Protection and Affordable Care Act would have a significant impact on the U.S. health care system. It would provide coverage for an estimated 31 million uninsured Americans, reduce the deficit by 2022, and create a new system of health care delivery that is more efficient and accessible.

4. Call to Action

For more information on the Patient Protection and Affordable Care Act, please visit the websites of the House of Representatives and the Senate Finance Committee. You can also contact your Members of Congress to express your support for comprehensive health care reform.
DIRECT Communication
Legislator
Expresses a view about specific legislation

GRASSROOTS Communication
General public
Expresses a view about specific legislation

Call to action

ACTION ALERT: THE DREAM ACT - CALL CONGRESS TO PASS THE DREAM ACT AND TUNE IN FOR THE VOTE

WASHINGTON, D.C. - For close to ten years, MALDEF and other organizations have worked to make the DREAM Act a reality. Today marks a milestone in your struggle for justice.

The DREAM Act has been stalled by a minority who lack the courage to stand up for the future of young adults who have been here since they were children. The Senate Judiciary Committee has rejected the Senate version of the Act.

But the fight is not over. Our elected leaders in Congress must be held accountable. We must publicly demand that Congress pass the DREAM Act and the October deadline for passing it.

Call your Senators and Representatives. Visit our website and sign our petition.

Now is the time. Act today! If Congress passes the DREAM Act, we can win.

Call to action:
- Visit our website: www.maldef.org
- Sign our petition
- Call your Senators and Representatives

DIRECT Communication
Legislator
Expresses a view about specific legislation

GRASSROOTS Communication
General public
Expresses a view about specific legislation

Call to action

CALL TO ACTION:
- "Learn more"
- "Take action"
- "Support our efforts"
- "Get involved"

Not Lobbying
1. Calculate organization’s overall lobbying limit based on annual expenditures.

2. **Total Lobbying Limits**
   - **Direct Communication**: Expressing a view about specific legislation
   - **Grassroots Communication**: General public expressing a view about specific legislation

3. **Grassroots lobbying limit is 25% of overall limit**
DIRECT Communication
With a legislator
Expressing a view about specific legislation

GRASSROOTS Communication
General public
Expresses a view about specific legislation
Call to action

**Lobbying EXCEPTIONS**

- Nonpartisan analysis, study, or research
- Request for technical assistance
- Self defense
- Examinations and discussions of broad social, economic, and similar problems
MUST
Full and Fair Discussion
Broadly Disseminated

MAY
Express a View
Indirect Call to Action
Subsequent Grassroots Lobbying Limited

Nonpartisan ANALYSIS

MUST
Have Invitation in Writing on behalf of Committee
Be Available to all members of Committee

MAY
Express a View on Specific Legislation

Technical ASSISTANCE

FOUNDATIONS can support ADVOCACY
Foundations can support advocacy through various roles:

- **Capacity Builder**: Build capacity of grantees to advocate and lobby.
- **General Support(er)**: Funding grantees that advocate through general support.
- **Responder**: Don’t proactively initiate policy change, but prepared to respond.
- **Convener**: Bring nonprofits and policy leaders to the table to find solutions.
- **Fund Specific Projects**: Fund lobbying or non-lobbying portions of advocacy projects.
- **Be an Advocate**: Advocate LOUDLY or quietly for your policy agenda.

About the Connect project:
The Connect project helps our grantees build relationships with their members of Congress and other policymakers.

The Foundations project helps PNAF grantees enhance relationships their members of Congress and other policymakers—relationships that will serve to further grantees work and position them as resources to members of Congress and the most pressing health and health care issues in America today.
Foundations can Support Advocacy

- **Capacity Builder**: Build capacity of grantees to advocate and lobby
- **General Support(er)**: Funding grantees that advocate through general support
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**FOUNDATIONS can SUPPORT ADVOCACY**
FOUNDATIONS can SUPPORT ADVOCACY

**Capacity Builder**
Build capacity of grantees to advocate and lobby

**General Supporter**
Funding grantees that advocate through general support

**Responder**
Don’t proactively initiate policy change, but prepared to respond

**Convener**
Bring nonprofits and policy leaders to the table to find solutions

**Fund Specific Projects**
Fund lobbying or non-lobbying portions of advocacy projects

**Be an Advocate**
Advocate LOUDLY or quietly for your policy agenda
Funding PUBLIC CHARITIES who LOBBY

83rd Legislative Priorities: Human Trafficking

- To significantly increase the number of organizations working to prevent human trafficking and to increase their capacity to provide services to survivors and families affected by trafficking.
- To increase funding for human trafficking education and awareness campaigns.
- To increase funding for human trafficking prevention programs.
- To increase funding for human trafficking recovery programs.
- To increase funding for human trafficking research and data collection.
- To increase funding for human trafficking policy advocacy.
- To increase funding for human trafficking legal services.
- To increase funding for human trafficking mental health services.
- To increase funding for human trafficking case management.
- To increase funding for human trafficking victim services.
- To increase funding for human trafficking family services.

Funding PUBLIC CHARITIES who LOBBY
EARMARKING grants for lobbying counts as lobbying but...
Foundations may use SAFE HARBORS to avoid lobbying expenditures

"Earmarked" Defined:
"A grant by a private foundation is earmarked if the grant is given pursuant to an agreement, oral or written, that the grant will be used for specific purposes."

Earmarked for Lobbying?
If foundation does not **EARMARK** grant for lobbying or any other specific project then...

foundation is not legally responsible for its grantee’s lobbying

**GENERAL SUPPORT** Grant
“Safe Harbor”

Not a lobbying expenditure if foundation grant is less than or equal to the project’s non-lobbying component

Foundation grant ≤ Specific project’s non-lobbying component

**SPECIFIC PROJECT** Grant
“Safe Harbor”

**SPECIFIC PROJECT** Grant
Example

$100,000 Project Budget:

<table>
<thead>
<tr>
<th>Project Budget</th>
<th>$50,000 grant from Foundation 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lobbying $40,000</td>
<td>$50,000 grant from Foundation 2</td>
</tr>
</tbody>
</table>

$50,000 < $60,000
No lobbying expenditure

$50,000 < $60,000
No lobbying expenditure
Restricting public charity grantees from lobbying is not necessary

Restrictive grant clauses limit grantees’ flexibility to accomplish their missions and ability to lobby within their own limits

Grant may say it is not “earmarked for lobbying” without prohibiting lobbying

Lobbying restriction is only necessary when private foundation makes grant to non-501(c)(3) organizations

Advocacy CAPACITY & EVALUATION

Advocacy Capacity Tool Indicators

I. Advocacy Goals, Plans & Strategies
   - Preparation
   - Agenda
   - Plans, Strategies & Adaptability

II. Advocacy Operations
    - Advocacy Partnerships
    - Coalition Building
    - Media Relations
    - Influencing Decision Makers

III. Advocacy Avenues
     - Administrative
     - Nonprofit Measures, Referenda & Initiatives
     - Election
     - Litigation

IV. Organizational Operations to Sustain Advocacy
    - Organizational Commitment
    - Funding Advocacy
    - Decision-Making Structure & Process
    - Fiscal Management & Sustainability
Advocacy Capacity Tool (ACT)
BolderAdvocacy.org/ACT

Tips for Evaluating Advocacy
A Checklist for Grantees

Discuss Evaluation Expectations Early
Grantees and grantees can set at a common understanding early on of reasonable expectations and ways to show the grantee's contribution.

Develop Long-Term as well as Incremental Goals
Policy goals may take years or even decades to achieve. For instance, a grantee who has a goal to make emergency food available by 2020 to all Californians who need it may include an incremental goal of educating or informing 20% of members of the legislature this year.

Use Benchmarks to Measure Outcomes, Progress, Capacity Building
A sample outcome benchmark may be a $2 million appropriation for clean water programs; a progress benchmark could be support gained from a key legislator; a capacity building benchmark may be motivating 50 constituents to contact officials.

Resources for Evaluating Community Organizing (RECO):
With Summaries of Available Resources on
✓ Theory
✓ Tools and Methods
✓ Case Examples
QUESTIONS?

WEST COAST
Alliance For Justice
436 14th St.
Suite 425
Oakland, CA 94612
510-444-6070

EAST COAST
Alliance for Justice
11 Dupont Circle, NW
2nd Floor
Washington, DC 20036
202-822-6070

advocacy@afj.org
866.675.6229
www.bolderadvocacy.org

Twitter: @AFJBeBold @IsaiahAFJ
Facebook: Bolder Advocacy